

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Sam Sloan

v.

Civil No. 16-cv-052-PB

Hearst Media Company, WMUR TV,
and Deborah Wasserman Schultz

REPORT AND RECOMMENDATION

Pro se plaintiff Sam Sloan, a Democratic candidate for the Office of the President of the United States, has filed a complaint (doc. no. 1) in this court, asserting that defendants violated his rights by denying him access to airtime to broadcast political campaign commercials, and refused to allow him to participate in televised Democratic candidate debates. The matter is before the court for preliminary review to determine whether Sloan has properly invoked the subject matter jurisdiction of this court.¹ See LR 4.3(d)(3).

¹A request for a Temporary Restraining Order, contained within the complaint in this matter, was denied by the court on February 9, 2016. See Doc. No. 4.

Background

The facts asserted by Sloan are set forth in the district judge's February 9, 2016, Order (doc. no. 4) ("February 9 Order") denying Sloan's request for a temporary restraining order. In short, Sloan alleges that defendant WMUR TV and its parent corporation, defendant Hearst Media, refused Sloan's request to purchase television campaign commercials, despite his willingness to pay for air time at the same rate as the major party candidates. Further, Sloan alleges that defendant Schultz has refused to allow him to participate in televised Democratic candidate debates. Sloan asserts injury to his presidential campaign as a result of the defendants' actions.

Discussion

I. Preliminary Review Standard

In determining whether a pro se pleading states a claim, the court construes the pleading liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007). Disregarding any legal conclusions, the court considers whether the factual content in the pleading and inferences reasonably drawn therefrom, taken as true, state a facially plausible claim to relief. Hernandez-

Cuevas v. Taylor, 723 F.3d 91, 102-03 (1st Cir. 2013) (citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

II. No Federal Cause of Action Asserted²

A. No State Action

As stated in the court's February 9 Order, Sloan failed, in his complaint, to identify the statutes or constitutional provisions upon which his claims are based. Because the defendants are private actors, he cannot assert a claim under 42 U.S.C. § 1983, asserting a violation of his constitutional rights, as such claims are available only as asserted against state actors. See Ealy v. Buckley, No. 15-cv-373-PB, 2015 U.S. Dist. LEXIS 141798 at *3, 2015 WL 6134188 at *2 (D.N.H. Sep. 15, 2015), R&R approved by No. 15-cv-00373-PB, 2015 U.S. Dist. LEXIS 141802, 2015 WL 6134188 (D.N.H. Oct. 19, 2015) (dismissing complaint seeking to compel New Hampshire Democratic Party ("NHDP") to allow plaintiff to speak at Democratic presidential candidate event, in part because plaintiff could not assert claim for relief against private party, NHDP, for violation of

²The court notes that the February 9 Order (doc. no. 4) denying a TRO stated that Sloan, in his complaint "failed to identify the statutes or constitutional provisions on which his claims are based." Despite being put on notice of this pleading deficiency, Sloan has filed nothing further in this case.

his federal constitutional rights). Nothing in the complaint allows the court to infer an actionable violation of Sloan's constitutional rights. See Jarvis v. Vill. Gun Shop, Inc., 805 F.3d 1, 8 (1st Cir. 2015) ("If there is no state action, the plaintiff's [constitutional] claim fails."), cert. pet. filed, No. 15-1132 (U.S. Mar. 14, 2016).

B. Communications Act

To the extent Sloan seeks to assert a claim alleging that defendants have violated the Communications Act, 47 U.S.C. § 315, which requires federally-licensed broadcasters to provide all candidates running for a public office equal opportunity to utilize the broadcast station, that statute provides no private right of action. See Levinson v. N.H. Pub. Television, No. 11-cv-589-PB, 2012 WL 1148259, at *3-*4 (D.N.H. Mar. 6, 2012) (dismissing action against television station because 47 U.S.C. § 315 provides no private right of action to enforce that statute's "equal opportunities" provision). "The proper course for raising a claim under section 315 is to file a complaint with the F[ederal] C[ommunications] C[ommission]." Schneller v. WCAU Channel 10, 413 F. App'x 424, 426 (3d Cir. 2011); see also Rosenberg v. City of Everett, 328 F.3d 12, 16 (1st Cir. 2003).

"The Communications Act 'requires an application for review to the full [FCC] as a prerequisite to judicial review of decisions made under delegated authority.'" Schneller, 413 F. App'x at 426-27 (citation omitted). There is nothing in the record to indicate that Sloan sought or obtained review of his claim with the FCC, and Sloan, therefore, cannot assert a claim under the Communications Act.

III. Diversity Jurisdiction

If Sloan has attempted to invoke this court's diversity jurisdiction, he has failed to do so. Sloan has not made a claim for damages or otherwise asserted facts demonstrating an amount in controversy in excess of \$75,000, which is a requirement for establishing the court's diversity jurisdiction. See 28 U.S.C. § 1332(a). Moreover, Sloan has failed to plead facts stating any claim under state law, upon which relief can be granted.

Conclusion

For the foregoing reasons, the district judge should dismiss this action in its entirety. Any objections to this Report and Recommendation must be filed within fourteen days of

receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See Garayalde-Rijos v. Mun. of Carolina, 747 F.3d 15, 21-22 (1st Cir. 2014).

A handwritten signature in black ink, reading "Andrea K. Johnstone", written over a horizontal line.

Andrea K. Johnstone
United States Magistrate Judge

April 28, 2016

cc: Sam Sloan, pro se